



Heal the Bay

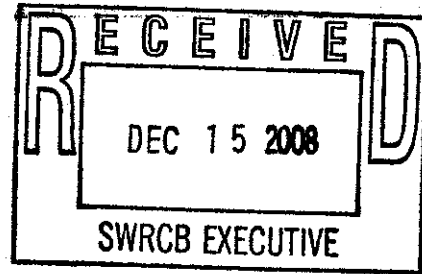
1444 9th Street
Santa Monica CA 90401

ph 310 451 1550
fax 310 496 1902

info@healthebay.org
www.healthebay.org

December 15, 2008

Chairwoman Doduc and Board Members
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comments on the Proposed Policy on Supplemental Environmental Projects and Policy for use of the State Water Pollution Cleanup and Abatement Account for Water Quality Improvement Projects

Dear Chairwomen Doduc and Board Members:

On behalf of Heal the Bay, we submit the following comments on the proposed Policy on Supplemental Environmental Projects ("SEP Policy") and Policy for use of the State Water Pollution Cleanup and Abatement Account for Water Quality Improvement Projects ("CAA Policy"). We appreciate the opportunity to provide comments.

Education and Outreach Projects should be Eligible as SEPs.

The Draft SEP Policy provides examples of categories of projects that would qualify for SEPs. Notably absent from this list is public education and outreach projects. Public education and outreach projects could potentially fit under the provided categories; however, the SEP Policy should specifically recognize education and outreach projects as a separate SEP category. Education and outreach projects are critical in efforts to meet water quality goals in the state and fit well under the definition of a SEP ("SEPs are projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger"). Of note, the current Enforcement Policy specifically states that "...public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.)..." are eligible as SEPs. Thus, we ask the State Board to highlight these projects in the SEP Policy.

Specifically, we urge the State Board to include an item under section C.2 of the Policy that recognizes education and outreach projects. Footnote "1" on page 3 should also be removed, as this gives the impression that education projects do not qualify as SEPs. In addition, we suggest that the following language modification to the first paragraph in C.2:

"The SEP shall directly benefit, ~~or~~ study or promote groundwater or surface water quality or quantity, and the beneficial uses of waters of the State."



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The State Board has long recognized the importance of education in protecting and maintaining water quality. In fact, the stated mission of the State Board's Education and Outreach Program is "to educate all Californians about the importance of water quality so that they will support our efforts and understand their role in protecting our state's rivers, lakes, streams and coastal waters." For these reasons, the State Board should maintain public awareness projects and education programs as part of the SEP program.

SEPs Must Benefit the Region in which the Violation Occurred.

Appropriately, Section E of the Policy states that there must be a nexus between the environmental impacts and impacted area resulting from the violation and the selected SEP. "[T]here must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP." (Draft SEP at 5). However, the SEP Qualification Criteria in the preceding section (Section D) allow for projects that have a "statewide benefit". These two sections of the SEP Policy appear to be in conflict. The current Enforcement Policy requires a geographic nexus and states that "...work in a far different part of the region or state would likely not meet the geographic nexus..." We urge the Board to take this same approach in the SEP Policy. It is critical that penalty monies stay in the region to benefit the areas that were degraded by the illegal action.

The CAA Policy should not allow for Unlimited Funding to Leave the Regions.

Paragraph a. of the CAA Policy allows the State Board not only to appropriate funds in an "emergency" (undefined), but also when any "other significant need for funding anywhere in California" arises. We strongly object to this language, which would allow an unlimited amount of CAA money to flow to the State Board, creating a significant disincentive for enforcement in the regions. The State Board is authorized to take enforcement actions; if there are statewide issues of such significance, the State Board should increase the number of completed enforcement actions that it undertakes and make its own statewide contributions to the CAA.

The CAA Policy should Not Deduct SEP funds from the Eligible Water Quality Improvement Project Funds.

Paragraph b. of the CAA Policy requires that SEP funds be deducted from the amount of the assessment reserved in the CAA for regional board water quality improvement projects. If the language in paragraph a. above stands, the regional boards will have no choice but to increase the number of SEPs used, to ensure that the maximum amount of collected fines is put to use locally. Thus, we urge the State Board to remove this requirement.

Miscellaneous



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The 2002 Water Quality Enforcement Policy addresses SEPs and Compliance Projects ("CPs"). As you know, CPs address problems related to the violation and bring the discharger back into compliance. Is a separate policy being created for CPs or will these continue to be in the larger Enforcement Policy?

Thank you for the opportunity to comment on these proposed Policies. Please do not hesitate to call if you would like to discuss these comments further.

Sincerely,

Kirsten James
Water Quality Director